INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statement	2
Argument	3
Conclusion	8

TABLE OF AUTHORITIES

Cases:	
Seminole Nation v. *United States*, 82 C. Cls. 135	7
Seminole Nation v. *United States*, decided January 6, 1941	6
United States v. *Choctaw Nation*, 38 C. Cls. 558	6
Statutes and treaty:	
Act of June 28, 1898, c. 517, 30 Stat. 495	3, 6
Act of July 1, 1902, c. 1362, 32 Stat. 641	3
Act of May 29, 1908, c. 216, 35 Stat. 444	3
Act of May 20, 1924, c. 161, Sec. 4, 43 Stat. 133, as amended	1
Act of August 12, 1935, c. 508, Sec. 2, 49 Stat. 571	4, 5
Treaty of April 28, 1866, 14 Stat. 769	7

291466—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 659

THE CHOCTAW NATION, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 62–107) is not reported.

JURISDICTION

The judgment of the Court of Claims sought to be reviewed was entered April 1, 1940 (R. 108). Motions for a new trial were denied October 7, 1940 (R. 108). The petition for a writ of certiorari was filed December 30, 1940. The jurisdiction of this Court is invoked under Section 4 of the Act of May 20, 1924, c. 161, 43 Stat. 133, as amended

by the Joint Resolution of May 19, 1926, c. 341, 44 Stat. 568, and the Act of February 19, 1929, c. 268, 45 Stat. 1229.

QUESTIONS PRESENTED

Petitioner brought this suit under the Act of June 7, 1924, empowering the Court of Claims to determine claims asserted by petitioner against the United States under treaties and Acts of Congress. The court held that the United States was liable to petitioner for $63,423.11; that the United States was entitled to offsets of $3,574,439.65; and accordingly that the petition should be dismissed. Petitioner's specific contentions are indicated in the Argument, below.

STATEMENT

A comprehensible statement of each of the many accounting details which underlie the decision below would expand this brief in opposition to a point which would defeat its purpose. It is believed that the nature of the questions presented by petitioner can be determined without a detailed understanding of the factual circumstances, or of all of the relevant statutes and treaties. These are extensively discussed in the findings (R. 30–62) and the opinion (R. 62–107) of the court below. The Argument, below, indicates the relevant treaties and statutes, and summarizes the accounting details with particularity sufficient to show the nature of the questions presented by petitioner.

ARGUMENT

1. Petitioner asserts (Pet. pp. 13–16) that it should recover $789,773.17. The 20 items going to make up this amount are set forth in the opinion below (R. 71) and the court's findings in respect of them are at R. 32–42. Petitioner relies upon the provision of the Atoka agreement, ratified by section 29 of the Act of June 28, 1898, c. 517, 30 Stat. 495, 509:

> That no charge or claim shall be made against the Choctaw and Chickasaw tribes by the United States for the expenses of surveying and platting the lands and town sites, or for grading, appraising and allotting the lands, or for appraising and disposing of the town lots, as herein provided.

The court below correctly held (R. 72–75, 88–89) that this provision comprehended expenses incurred in respect of town lots sold under authority of the Atoka agreement[1] and pointed out (R. 72–73) that the United States had borne these expenses. Petitioner's suggestion (Pet. pp. 13–14)

[1] Petitioner does not, and could not, assert that any of the items related to expenditures incurred under the Atoka agreement. For example, the sale of unallotted lands (item 1) and of segregated coal and asphalt lands (item 2) was authorized by the supplemental agreement ratified by the Act of July 1, 1902, c. 1362, 32 Stat. 641, 642, 653. The twentieth item "Expenses of sale of town lots" relates, as the tabulation shows (R. 71), to sales under the Act of May 29, 1908, c. 216, 35 Stat. 444, 445, and not to sales under the Atoka agreement (R. 87–89). No other item bears even a superficial relationship to the obligation of the Atoka agreement.

that it would be permissible to construe the provision as a broad undertaking to bear all the remotely related or wholly separate expenditures included in this claim, even if tenable, obviously does not show that, in rejecting such an expanded construction, the court erred.

2. Petitioner contends (Pet. p. 16) that it is entitled to recover $119,294.25 spent from tribal funds for educational purposes in excess of appropriations (R. 34–37). The expenditures were made solely for petitioner's benefit (R. 37) to pay expenses which the United States was not obligated to bear (R. 77). The court below took the view (R. 76–78) that, since the disbursements were for expenses of this character, a judgment for their amount would result in a gratuitous expenditure by the United States for the benefit of the petitioner, within the meaning of Section 2 of the Act of August 12, 1935, c. 508, 49 Stat. 571, 596. It held (R. 77 that Section 2 was a "ratification of the disbursements made by the Secretary of the Interior from tribal funds for proper purposes and for the benefit of the tribe which may have been in excess of congressional appropriation." Accordingly, the court concluded that the United States was not liable.

Section 2 directs the Court of Claims to offset against any amount found due an Indian tribe all sums expended gratuitously by the United States for the benefit of the tribe but provides that funds

appropriated and expended from tribal funds shall not be construed as gratuities. On its face, the Act relates to offsets, and hence the court's holding went beyond its literal meaning.

However doubtful this construction might at first seem, nothing advanced by petitioner tends to show that it is erroneous. Apparently, petitioner argues that expenditures from tribal funds may not be offset against a liability of the United States to petitioner. But, as the court's findings in respect of gratuities to be offset make plain (R. 54–62), the court did not offset against the Government's liability to petitioner any "funds appropriated and expended from tribal funds" or sums which, like the $119,294.25 here claimed, were expended from tribal funds in excess of authorized appropriations. Therefore, that part of Section 2 invoked was given precisely the effect urged by petitioner. It does not follow, because such expenditures are unavailable as an offset, that the United States should be required to restore to tribal funds amounts disbursed for petitioner's benefit to meet expenses which admittedly the United States never assumed. Petitioner, therefore, does not show that the court below erred in holding that, by reason of the Act of August 12, 1935, the United States was not liable.

3. There is no warrant for petitioner's contention (Pet. pp. 16–17) that it is entitled to $147,491.36 more than it was awarded by the judgment

in *United States* v. *Choctaw Nation,* 38 C. Cls. 558 (1903). As the court below held (R. 94) its jurisdiction under the Act of June 7, 1924, pursuant to which this suit was brought, extends only to claims which "have not heretofore been determined and adjudicated on their merits." Petitioner does not contend that the court erred in the determination of its jurisdiction.

4. Petitioner urges (Pet. pp. 17–18) that $419,580.19, paid by the Secretary of the Interior to the Choctaw National Treasurer (R. 44–46), was disbursed in violation of Section 19 of the Act of June 28, 1898, the Curtis Act, 30 Stat. 495, 502. The Court of Claims rightly held (R. 95) that Section 19 related only to funds which were to be distributed to individuals of the tribe and that the sums in question were not so distributable. *Seminole Nation* v. *United States,* decided January 6, 1941.[2]

5. Petitioner asserts (Pet. pp. 18–19) that the Secretary of the Interior disbursed from trust

[2] Even if the Curtis Act had been violated, petitioner would not be entitled to recover the payments made to the tribal treasurer. In *Seminole Nation* v. *United States*, decided January 6, 1941, the Court of Claims held:

"But although the Curtis Act did prohibit the making of these per capita payments to the tribal treasurer, and they were so made in violation of its terms, still we do not think the tribe is entitled to recover. The passage of the Curtis Act did not create in the individual Indians any vested rights. It does not amount to an agreement with the tribe for the benefit of its individual members. It was merely a direction to the agents of the United States."

funds of the tribe $978,787.31 without authority of law. After a detailed examination (R. 97–101) of the various statutes under which the Secretary acted, the Court of Claims concluded (R. 101) that the payments were made "pursuant to authority and direction of Congress that they be paid 'out of any moneys' of the tribe, or 'the funds' of the tribe, or 'out of any funds' of the tribe, or 'from the tribal funds' of the tribe." Petitioner's contention that these authorizations are to be read so narrowly that they would not extend to *trust* funds is unsupported by authority and unwarranted.[3] It follows, of course, that its claim (Pet. p. 20) for $1,233,907.40 as interest upon the $978,787.31 is likewise baseless.

6. Petitioner asserts (Pet. pp. 20–21) that it is entitled to recover $286,142.18 under article 3 of the treaty concluded April 28, 1866, between the United States and the Choctaws and Chickasaws. 14 Stat. 769. By article 3 the United States agreed to pay petitioner $225,000 as its share of $300,000, the purchase price of lands ceded by the Choctaws and Chickasaws. Despite petitioner's contrary assertion (Pet. p. 20) the agreed amount, together with $7,125 on account of interest for the two years

[3] The language from the opinion of then Assistant Attorney General Van Devanter, quoted in *Seminole Nation* v. *United States*, 82 C. Cls. 135, 157–158, expressed the view that Section 19 of the Curtis Act governed disbursement of Seminole funds and did not, as petitioner intimates (p. 19), construe statutes relating to payments from Indian funds.

following ratification of the treaty, was long since paid (R. 32, 70). However, an analysis of the petition in the court below discloses (R. 2–4) that the claim for $286,142.18 is based upon an assumption that petitioner should have additional *interest* of $79,082.87 and also interest of $206,059.31 upon the $79,082.87. The petition suggests no reason for this claim, and there is none.

7. In sole support of its assertion (Pet. pp. 21–24) that the court erred in finding (R. 54–62) that $3,574,439.65 was gratuitously spent by the United States for the benefit of petitioner, the latter cites (Pet. pp. 22–24) treaty provisions by which the United States agreed to furnish it with an agent. Plainly, without any showing that the expenditures were covered by these treaty provisions, these citations do not tend to show that the Court of Claims erroneously concluded that the moneys in question were expended by the United States without any obligation under any treaty or agreement.

CONCLUSION

The decision of the Court of Claims is correct and presents neither a conflict of decisions nor a question of general importance. Therefore, it is respectfully submitted that the petition for writ of certiorari should be denied.

FRANCIS BIDDLE,
Solicitor General.

FEBRUARY 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941